

DENNIS J. HERRERA, State Bar #139669
City Attorney

KRISTEN A. JENSEN, State Bar #130196

THOMAS S. LAKRITZ, State Bar #161234

VICTORIA WONG, State Bar #214289

Deputy City Attorneys

City Hall, Room 234

1 Dr. Carlton B. Goodlett Place

San Francisco, California 94102

Telephone: (415) 554-6547

Facsimile: (415) 554-4747

E-Mail: tom.lakritz@sfgov.org

Attorneys for Defendant

CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

METRO FUEL LLC, a Delaware limited
liability company,

Plaintiff,

vs.

CITY OF SAN FRANCISCO, a municipal
corporation, COUNTY OF SAN
FRANCISCO, a subdivision of the State
of California, CITY AND COUNTY OF
SAN FRANCISCO, a chartered California
city and county and DOE 1 through DOE
10,

Defendants.

Case No. C07-6067 JSW

**DEFENDANT CITY AND COUNTY OF
SAN FRANCISCO'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Hearing Date: November 14, 2008
Time: 9:00 A.M.
Place: Courtroom 2, 17th Fl.

Trial Date: October 26, 2009

Pursuant to Rule 201, Defendant the City and County of San Francisco, sued herein as the City of San Francisco, County of San Francisco, and City and County of San Francisco (collectively, "the City" or "San Francisco") hereby requests that the Court take judicial notice of numerous documents described below. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). San Francisco hereby requests that the Court take judicial notice of the following documents:

<u>Exhibit</u>	<u>Description</u>
A	San Francisco, Cal., Planning Code art. 6 (2007). <i>Santa Monica Food Not Bombs v. City of Santa Monica</i> , 450 F.3d 1022, 1025 n.2 (9 th Cir. 2006) (ordinances are proper subjects of judicial notice).
B	San Francisco, Cal., Voter Information Pamphlet And Sample Ballot, Consolidated Primary Election, March 5, 2002 ("Proposition G"). <i>Gay-Straight Alliance Network v. Visalia Unified Sch. Dist.</i> , 262 F. Supp. 2d 1088, 1100 (E.D. Cal. 2001) (taking judicial notice of certified copies of official records showing registration of school district with roster of public agencies maintained by county recorder's office and Secretary of State); <i>Natural Resources Defense Council v. Kempthorne</i> , 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
C	San Francisco, Cal., Consolidated Primary Election Results, March 5, 2002, Proposition G. <i>Gay-Straight Alliance Network v. Visalia Unified Sch. Dist.</i> , 262 F. Supp. 2d 1088, 1100 (E.D. Cal. 2001) (taking judicial notice of certified copies of official records showing registration of school district with roster of public agencies maintained by county recorder's office and Secretary of State); <i>Natural Resources Defense Council v. Kempthorne</i> , 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
D	San Francisco, Cal., Ordinance 140-06 (June 20, 2006). <i>Santa Monica Food Not Bombs v. City of Santa Monica</i> , 450 F.3d 1022, 1025 n.2 (9 th Cir. 2006) (ordinances are proper subjects of judicial notice).
E	San Francisco, Cal., Voter Information Pamphlet And Sample Ballot, Consolidated Primary Election, November 6, 2007 ("Proposition K"). <i>Gay-Straight Alliance Network v. Visalia Unified Sch. Dist.</i> , 262 F. Supp. 2d 1088, 1100 (E.D. Cal. 2001) (taking judicial notice of certified copies of official records showing registration of school district with roster of public agencies maintained by county recorder's office and Secretary of State); <i>Natural Resources Defense Council v. Kempthorne</i> , 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).

- F** San Francisco, Cal., Consolidated Primary Election Results, November 6, 2007, Proposition K. *Gay-Straight Alliance Network v. Visalia Unified Sch. Dist.*, 262 F. Supp. 2d 1088, 1100 (E.D. Cal. 2001) (taking judicial notice of certified copies of official records showing registration of school district with roster of public agencies maintained by county recorder's office and Secretary of State); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- G** San Francisco, Cal. Legislative File No. 080658 (introduced May 13, 2008). *Chaker v. Crogan*, 428 F.3d 1215, 1223 n.8 (9th Cir. 2005) (granting request for judicial notice of the legislative history of state statute); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- H** City and County of San Francisco, Department of Pubic Works, Amended Order No. 177,159 (Sept. 26, 2007). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- I** City and County of San Francisco, Department of Pubic Works, Amended Order Nos. 163,368 (Sept. 8, 1993) and 169,739 (May 5, 1996). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- J** City and County of San Francisco, Department of Pubic Works, Amended Order No. 163,369 (Sept. 8, 1993). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- K** City and County of San Francisco, Department of Pubic Works, Guidelines Regarding Regulation of News Racks (Nov. 2, 2005). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- L** San Francisco, Cal., Charter, art. V (2006). *Aramark Facility Servs. V. Service Employees Int'l Union*, 530 F.3d 817, 826 n.4 (9th Cir. 2008) (taking judicial notice of legislative materials); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- M** City and County of San Francisco, San Francisco Arts Commission Civic Design Review Submission Guidelines. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).

- 1 **N** San Francisco Arts Commission, Civic Design Review Committee, Minutes (Sept. 17, 2007). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 2
- 3
- 4 **O** San Francisco Arts Commission, Civic Design Review Committee, Minutes (Oct. 15, 2007). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 5
- 6
- 7 **P** San Francisco Arts Commission, Civic Design Review Committee, Minutes (Feb. 25, 2008). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 8
- 9
- 10 **Q** San Francisco Arts Commission, Civic Design Review Committee, Minutes (June 16, 2008). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 11
- 12
- 13 **R** San Francisco Arts Commission, Minutes (Dec. 3, 2007). *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 14
- 15
- 16 **S** San Francisco, Cal., Public Works Code art. 5.4 (2007). *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (ordinances are proper subjects of judicial notice).
- 17
- 18 San Francisco, Cal., Public Works Code art. 5.7 (2007). *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (ordinances are proper subjects of judicial notice).
- 19
- 20 **T** Notices of Violation from the San Francisco Planning Department. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 21
- 22
- 23 **U** Notices of Violation and Order of Abatement from Department of Building Inspection. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (court may take judicial notice of records and reports of administrative bodies); *Natural Resources Defense Council v. Kempthorne*, 539 F. Supp. 2d 1155, 1167 (E.D. Cal. 2008) (documents prepared by a government agency that are public records are noticeable).
- 24
- 25
- 26 **V** Los Angeles, Cal., Municipal Code, div. 62 (1996). *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (ordinances are proper subjects of judicial notice).
- 27
- 28

1 **W** Miami, Fl., Zoning Ordinance, art. 10 (2007). *Santa Monica Food Not Bombs v. City*
2 *of Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (ordinances are proper
3 subjects of judicial notice).
4
5

6 Dated: August 29, 2008

Respectfully submitted,

7 DENNIS J. HERRERA
8 City Attorney
9 KRISTEN A. JENSEN
10 THOMAS S. LAKRITZ
11 Deputy City Attorneys

12 By: _____/S/_____
13 THOMAS S. LAKRITZ

14 Attorneys for Defendant CITY AND COUNTY OF
15 SAN FRANCISCO
16
17
18
19
20
21
22
23
24
25
26
27
28